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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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09/830,145

04/20/2001

Christian John Cook

14684.47

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22913

7590

01/30/2003

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EXAMINER

SUN, XIUQIN

ART UNIT

PAPER NUMBER

2863

DATE MAILED: 01/30/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

09/830,145

Applicant(s)

COOK, CHRISTIAN JOHN

Examiner

Xiuqin Sun

Art Unit

2863

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 04 November 2002.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 39-67 and 89-94 is/are pending in the application.
- 4a) Of the above claim(s) 1-38 and 68-88 is/are withdrawn from consideration.
- 5) ☒ Claim(s) 40 and 89-94 is/are allowed.
- 6) ☒ Claim(s) 39,42-45,54,57,63,65 and 66 is/are rejected.
- 7) ☒ Claim(s) 41,46-53,55,56,58-62,64 and 67 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

**Priority under 35 U.S.C. §§ 119 and 120**

- 13) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☒ Certified copies of the priority documents have been received in Application No. 9.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other:

## DETAILED ACTION

### *Election/Restrictions*

1. Applicant's election without traverse of inventions III (claims 39-67 along with generic claims 89-94) in Paper No. 8 is acknowledged.

Claims 1-38 and 68-88 stand withdrawn in view of the election without traverse of paper No. 8.

### *Claim Rejections - 35 USC § 103*

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. Claims 39, 42-45, 54, 57, 63, 65 and 66 are rejected under 35 U.S.C. 103(a) as being unpatentable over Tong et al. (U.S. Pat. No. 5595444) in view of Hofman (U.S. Pat. No. 5682149).

Tong et al. teach a method and system for providing an indication of at least one of meat quality, pH levels, and stress levels in an animal to be slaughtered (col. 2, lines 32-48; col. 12, lines 44-62; col. 10, lines 4-9; col. 15, lines 19-27; col. 6, lines 34-44 and col. 15, lines 1-12), comprising: a) obtaining measurements corresponding to a body temperature of the animal (col. 2, lines 32-48; col. 5, lines 47-67; col. 6, lines 1-8 and

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col. 8, lines 3-49); b) applying an algorithm to the measurements obtained from a), which algorithm takes account of variations in body temperature (col. 2, lines 32-48; col. 3, lines 45-65); and c) comparing the results of the algorithm to a predetermined threshold (col. 2, lines 32-48; col. 6, lines 45-67). Tong et al. further teach a microprocessor having input means for receiving the measurement from the measurement device, the microprocessor operable to implement an algorithm to the measurement for analyzing the measured data (col. 6, lines 34-44; col. 8, lines 3-49; col. 11, lines 57-67 and col. 12, lines 1-25). Tong et al. further teach that: said measurements are taken for a predetermined time period (col. 7, lines 53-67 and col. 8, lines 1-2); said algorithm is applied at an end of the predetermined time period (col. 7, lines 1-22); said measurements are taken on the outer part of the animal's body (abstract, col. 5, lines 47-67; col. 11, lines 57-67 and col. 12, lines 1-25); said microprocessor is a provided by way of a remote computer, wherein the microprocessor is operable to compare the output of the algorithm to a predetermined threshold, including an indication to indicate where the output of the algorithm has exceeded the predetermined threshold (col. 6, lines 45-67; col. 11, lines 57-67; col. 12, lines 1-25; col. 13, lines 14-67 and col. 14, lines 1-17).

Tong et al. do not teach: a) obtaining time varying measurements corresponding to a body temperature of the animal at periodic sampling intervals; b) said algorithm cumulatively takes account of temporal variations in body temperature. Tong et al. also do not mention that: the temperature measurement device is a body mountable

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measurement device; the measurements are conducted over a period of between 3-36 hours; said predetermined time period is at least 12 hours and extends up to 24 hours.

Tong et al. teach that the measurement should be conducted over a certain predetermined time period. It would have been obvious to one having ordinary skill in the art at the time the invention was made optimize range of the time period in order to obtain the best results from the data analysis (Tong et al., col. 6, lines 14-21), since it has been held that discovering an optimum value of a result effective variable involves only routine skill in the art.

Hofman discloses a method and device for measuring and analyzing time dependent variation of body temperature of animals (abstract), and teaches the steps and means of: obtaining time dependent measurements corresponding to a body temperature of the animal at periodic sampling intervals (abstract; col. 1, lines 23-67; col. 2, lines 1-5; col. 4, lines 64-67; col. 5, lines 1-12 and col. 7, lines 12-34); and a data analysis algorithm cumulatively takes account of temporal variations in body temperature (Figs. 3 and 6; col. 4, lines 64-67; col. 5, lines 1-12 and col. 7, lines 58-67 and col. 8, lines 1-18). The measurement device taught by Hofman is a body mountable measurement device (col. 1, lines 23-67; col. 2, lines 1-5).

It would have been obvious to one having ordinary skill in the art at the time the invention was made to include the teaching of Hofman time dependent temperature data collection and analysis algorithm in the Tong system in order to determine at least one of meat quality, pH levels, and stress levels in an animal by analyzing the animal's body temperature over time (Hofman, col. 1, lines 66-67 and col. 2, lines 1-5).

***Allowable Subject Matter***

4. Claims 40 and 89-94 are allowed.
5. Claims 41, 46-53, 55-56, 58-62, 64 and 67 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

***Contact Information***

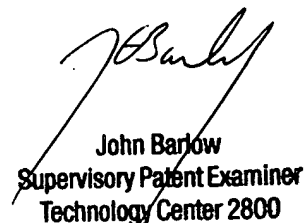
6. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Xiuqin Sun whose telephone number is (703)305-3467. The examiner can normally be reached on 7:00am-4:30pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, John Barlow can be reached on (703)308-3126. The fax phone numbers for the organization where this application or proceeding is assigned are (703)872-9318 for regular communications and (703)872-9319 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703)308-0956.

XS

January 24, 2003

  
John Barlow  
Supervisory Patent Examiner  
Technology Center 2800